

**THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Appellant(s): Antonius EMMERINK et al.
Appl. No.: 10/088,683
Conf. No.: 4836
Filed: July 9, 2002
Title: COMMUNICATIONS SYSTEM
Art Unit: 2616
Examiner: J. M. Philpott
Docket No.: 118990-028

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPELLANTS' APPEAL BRIEF

Sir:

Appellants submit this Appeal Brief in support of the Notice of Appeal filed on June 22, 2007. This Appeal is taken from the Final Rejection dated February 22, 2007 and the Notice of Panel Decision from Pre-Appeal Brief Review dated, August 1, 2007.

I. REAL PARTY IN INTEREST

The real party in interest for the above-identified patent application on Appeal is Siemens Aktiengesellschaft by virtue of an Assignment recorded on October 1, 2002 at reel 013119, frame 0978 in the United States Patent and Trademark Office.

II. RELATED APPEALS AND INTERFERENCES

Appellants' legal representative and the Assignee of the above-identified patent application do not know of any prior or pending appeals, interferences or judicial proceedings which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision with respect to the above-identified Appeal.

III. STATUS OF CLAIMS

Claims 1-17 are pending in this application and are on appeal. No claim is allowed.

Claims 1-17 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,982,950 to Gardner.

IV. STATUS OF AMENDMENTS

No amendments were made to the claims on appeal subsequent to the final rejection. The final rejection was mailed February 22, 2007. Applicants filed a Notice of Appeal and a Pre-Appeal Brief Conference Request June 22, 2007.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Presently, claims 1 and 9 are the only independent claims. A summary of the invention by way of reference to the drawings and specification for each independent claim is provided as follows:

Claim 1

Independent claim 1 is directed to a method for setting up and/or clearing a communications link via communication devices of at least a first and a second type (page 1, lines 9-12, Figs. 1 and 2). The method includes signaling at least first (250) and second (150) types of communication devices to control the setting up and/or clearing of the communications link (page 14, lines 15-19, page 12, lines 1-5), and setting up and/or clearing the connection for the first type via at least one decentralized switching device (page 15, lines 1-16). Wherein the signaling takes place from a central device (page 16, lines 4-20).

Claim 9

Independent claim 9 is directed to a system for setting up and/or clearing a communications link via communication devices of at least a first and a second type (page 1, lines 9-12, Figs. 1 and 2). The system includes a transport network (700) to provide the communications link between communication devices of a first type (250), a control network to control the setting up and/or clearing of the communications link (page 15, lines 9-16), a switching matrix to provide the communications link between communication devices of the second type (page 12, lines 34-40 and page 13, lines 1-15), and a means for controlling the setting up and/or clearing of connections (CS1, CS2) in the transport network through the control network (page 15, lines 9-25). The means is operatively connected to the switching matrix, and connection control information for the switching matrix being supplied to them as part of a control information item (page 15, lines 1-25).

Although specification citations are given in accordance with C.F.R. 1.192(c), these reference numerals and citations are merely examples of where support may be found in the specification for the terms used in this section of the Brief. There is no intention to suggest in any way that the terms of the claims are limited to the examples in the specification. As demonstrated by the references numerals and citations below, the claims are fully supported by

the specification as required by law. However, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for the claim terminology as is done here to comply with rule 1.192(c) does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the specification. In short, the references numerals and specification citations are not to be construed as claim limitations or in any way used to limit the scope of the claims.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-17 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,982,950 to Gardner.

VII. ARGUMENT

A. LEGAL STANDARDS

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

B. THE CLAIMED INVENTION

As discussed above, the present claims are directed to a method and device for setting up and/or clearing a communications link via communication devices of at least a first and a second type. Furthermore, the claims are directed to a system and method that includes signaling at least the first and second types of communication devices to control the setting up and/or clearing of the communications link, and setting up and/or clearing the connection for the first type via at least one decentralized switching device. The signaling takes place from a central device.

C. THE REJECTION OF INDEPENDENT CLAIMS 1 AND 9 AND DEPENDENT CLAIMS 2-8 AND 10-17 SHOULD BE REVERSED BECAUSE THAT EXAMINER HAS NOT SHOWN THAT EACH AND EVERY ELEMENT OF THESE CLAIMS IS FOUND IN A SINGLE PRIOR ART REFERENCE

1. Gardner fails to disclose first and second types of communication devices, as recited in independent claim 1.

The Examiner contends that Gardner's first switching system 206 and Gardner's second switching system 208 correspond to the claimed first and second types of communication devices. Gardner clearly does not disclose both of these elements.

Gardner discloses a tandem system 204 which connects calls between switching systems 206 and 208 (col. 5, lines 42-43). A switching system is not a communication device.

The Examiner contends that a switching system is a type of communication device and that a "communication device" is a broad term. Applicants respectfully disagree that the use of the phrase "communication device" is broad enough in claim 1 to encompass a switching device.

As evidence of this, claim 1 actually recites an additional element which is a switching device. The patentee is entitled to be its own lexicographer, and if the patentee claims both a communication device and a switching device as two distinctly different claim elements, applicants contends that the presumption is that these are different types of devices. Further, merely because a switching system may be part of a telecommunication system does not mean that it is a communication device *per se*. The Examiner seems to be basing his rejection on this presumption, which is incorrect.

Furthermore, claim 1 recites both a “decentralized switching device” and “communication devices.” That is, the claim recites two different types of communication devices. If the Examiner is asserting that a switching device is a type of communication device, then another switching device, even if it is different than the first switching device, is the **same** type of communication device, i.e., a switching device. Thus, even given the Examiner’s overly broad interpretation of a “communication device,” Gardner still fails to teach or suggest the claimed features. It is simply a matter of fact that the claim itself distinguishes between two entities, having different functions and inter-working with each other, so that the same and single device cannot be read as both (a switch and a communication device) at the same time.

2. Gardner fails to disclose that the signaling takes place from a central device, as recited in independent claim 1.

According to Gardner, signaling does not originate from the signal processor and does not take place in the processor. Rather, the signal processor taught by Gardner merely receives and processes call signaling (see col. 2, line 7 to 9).

The Examiner asserts that the broad claim language “signaling takes place from” does not indicate clearly that the signaling originates at the central device. Applicants disagree. The Examiner is ignoring the plain language of the claim. The claim clearly recites that the signaling takes place from a central device. There is no reasonable interpretation in which one of ordinary skill in the art would view that the signaling originates from anywhere **other** than the central device in accordance with the meaning of the word “from.”

3. Gardner fails to disclose signaling first and second types of communication devices to control the setting up and/or clearing of the communications link, as recited in independent claim 1.

The Examiner contends that Gardner discloses signaling two types of communication devices because Gardner teaches that elements 206 and 208 are different types of devices. Applicants respectfully disagree.

Arguably, Gardner discloses sending messages identifying selected connections; however, Gardner does not teach signaling the first and second types of communication devices. Since Gardner does not teach signaling the first and second types of communication devices, it cannot possibly teach that the signaling is done to control the setting up and/or clearing of the communications link. Applicants submit that Examiner has failed to consider the entire claim limitation in his rejection.

The rejection of dependent claims 2-8 should be overturned since they are dependent from claim 1. Moreover each of the dependent claims further distinguishes itself over the cited prior art.

The rejection of independent claim 9 should be overturned for similar reasons to those discussed above. Namely, the cited prior art does not disclose a system for setting up and/or clearing a communications link via communication devices of at least a first and a second type, the system including a transport network to provide the communications link between communication devices of a first type, a control network to control the setting up and/or clearing of the communications link, a switching matrix to provide the communications link between communication devices of the second type, and a means for controlling the setting up and/or clearing of connections in the transport network through the control network.

The rejection of dependent claims 10-17 should be overturned since they are dependent from claim 9. Moreover each of the dependent claims further distinguishes itself over the cited prior art.

VIII. CONCLUSION

Appellants respectfully submit that the Examiner has failed prove that each and every element as set forth in the claims is found, either expressly or inherently described, in a single prior art reference. Accordingly, Appellants that the anticipation reference is erroneous and should be reversed by this Board.

A check in the amount of \$500 is submitted herewith to cover the cost of the Appeal Brief. The Director is authorized to charge any additional feed which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 117393-068 on the account statement.

Respectfully submitted,

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BY 

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Dated: November 1, 2007

CLAIMS APPENDIX

1. A method for setting up and/or clearing a communications link via communication devices of at least a first and a second type, comprising:
signaling the at least first and second type of communication devices to control the setting up and/or clearing of the communications link; and
setting up and/or clearing the connection for the first type via at least one decentralized switching device, wherein
the signaling takes place from a central device.
2. The method as claimed in claim 1, wherein the connection is set up and/or cleared via a central device for the second type.
3. The method as claimed in claim 1, wherein the connection is set up via a transport network for the first type.
4. The method as claimed in claim 1, in which the central device controls a decentralized switching device.
5. The method as claimed in claim 1, in which communications data for the communications link is converted in the region of a decentralized switching device for communication devices of different types.
6. The method as claimed in claim 1, further comprising:
setting up and/or clearing the communications link from a communications terminal which is configured for connection via time slots in a time slot multiplexing connection, the connection being set up via a transport network by producing, in the central device, at least one time slot control information item, which is used for setting up connections in the transport network, and one time slot is reserved for transferring communication data between communication devices of different types.

7. The method as claimed in claim 6, in which the time slot control information is linked to a transport-network-specific information item and is transmitted to a decentralized device.

8. The method as claimed in claim 1, in which an asynchronous transmission method is used for transmission via the communications link.

9. A system for setting up and/or clearing a communications link via communication devices of at least a first and a second type, comprising:

a transport network to provide the communications link between communication devices of a first type;

a control network to control the setting up and/or clearing of the communications link;

a switching matrix to provide the communications link between communication devices of the second type; and

means for controlling the setting up and/or clearing of connections in the transport network through the control network, the means being operatively connected to the switching matrix, and connection control information for the switching matrix being supplied to them as part of a control information item.

10. The system as claimed in claim 9, in which the transport network has a different topology than the control network.

11. The system as claimed in claim 9, in which the transport network has at least one decentralized device for connection of a communications terminal, and has a switching device in the region of the decentralized device which provides the communications link in the transport network.

12. The system as claimed in claim 9, in which the communications device of the second type has at least one peripheral device with at least one device for connection of a communications terminal, and has a switching device to provide the communications link in the transport network.

13. The system as claimed in claim 9, which has a conversion apparatus for conversion of communication data, which conversion apparatus converts communication data in at least one data flow direction as a function of the type of communication device, with at least data types for a communication device of the first type and for a communication device of the second type.

14. The system as claimed in claim 13, in which the conversion apparatus is configured in the data flow in the immediate vicinity of a decentralized switching device.

15. The system as claimed in claim 9, which has central means for providing at least one connection-related service feature, the means being operatively connected to the central device.

16. The system as claimed in claim 9, which is in the form of a private branch exchange and has at least one decentralized device for connection of communications terminals.

17. The system as claimed in claim 9, which has a control device to provide the communications link in the region of the decentralized device, if a central control device is not available.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.